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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,491	07/21/2003	Brian Roberts	10750-250	4988
1059	7590	04/03/2006	EXAMINER	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			LARSON, JUSTIN MATTHEW	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,491

Applicant(s)

ROBERTS, BRIAN

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,17-19 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,17-19 and 21-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/12/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 17, 18, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ivarson et al. (US 6,474,524) in view of Gausling et al. (US 6,164,509).

Regarding claim 17, Ivarson et al. discloses a backpack comprising a backpack body, said backpack body having a back-facing face (16), said backpack body defining at least one storage compartment having a bottom (14), wherein said bottom is angled upwards in a direction away from said back-facing face, where said backpack is configured to maintain said bottom generally in said direction when said backpack contains a load therein; and at least one shoulder strap (38) connected to said backpack body, wherein said at least one shoulder strap is adapted for mounting said backpack on a wearer; and wherein said backpack body has an away-facing face (24) generally opposed to said back-facing face. Ivarson et al. fails to disclose a semi-rigid bottom board positioned at said bottom and at least one cinch strap connected to said backpack body for cinching said away-facing face and said back-facing face towards each other.

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Regarding the semi-rigid bottom board, Gausling et al. teaches that a rigid bottom on a backpack body provides added support and ergonomic utility to the backpack (col. 7 lines 12-17). Gausling et al. further teaches that this rigidity along the bottom of the backpack body can be provided by inserting a rigid member such as a hard Nylon sheet inside a pocket formed by the bottom panel of the backpack (col. 7 lines 34-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide rigidity along the bottom surface of the Ivarson et al. backpack by implementing a semi-rigid bottom board along the bottom surface, as taught by Gausling et al., in order to provide additional support and ergonomic utility to the backpack.

Regarding the cinch strap, Gausling et al. teaches that an adjustable cinch strap (400/422/410) can be provided on at least one lateral or side panel of the backpack body, the cinch strap acting as compression straps to adjust the shape of the backpack body, thereby adjusting the load distribution of the backpack's contents with respect to a user's back (col. 6 line 65 – col. 7 line 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide cinch straps on the backpack of Ivarson et al., as taught by Gausling et al., allowing a user to modify the shape or configuration of the backpack body and thus redistribute the weighted load to a comfortable position on their back. (Note that Gausling et al. also discloses the possibility of moving the cinch strap to various locations other than that explicitly shown in the drawings (col. 7 lines 6-12))

Regarding claim 18, Ivarson et al. discloses that the back panel (16) may be reinforced with a layer of material in order to enhance rigidity (col. 2 lines 56-59). Gausling et al., as previously mentioned, teaches that a panel of a backpack may be given rigidity by providing a semi-rigid board on the panel. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to position a semi-rigid back board on the back-facing panel of the Ivarson et al. backpack.

Regarding claim 19, Ivarson et al. discloses that the back-facing panel may include a cushion material for increased comfort to the user.

Regarding claim 21, the cinch strap of Gausling et al. extends downwards in a direction from said back-facing face towards said away-facing face. It would have been obvious to one having ordinary skill in the art at the time the invention was made to maintain this orientation of the cinch strap when implementing the cinch strap on the backpack of Ivarson et al.

3. Claims 22-25, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ivarson et al. in view of Gausling et al., and further in view of Swetish (US 5,984,157).

Regarding claims 22, 23, 27, and 28, Ivarson et al. in view of Gausling et al., as applied in paragraph #2 above, discloses the claimed invention except for at least one cinch strap connected to said backpack body for cinching said away-facing face and said back-facing face towards each other. Gausling et al. does teach the use of straps (600) having a first end (610) that is on the backpack body and a second end (620) that

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is on the at least one shoulder strap and is spaced from the back-facing face, these straps existing to help properly distribute the load of the pack in relation to a user's body (col. 9 lines 5-9, 22-26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include such straps, in the manner taught by Gausling et al., on the backpack of Ivarson et al, providing an additional element of structural support on the backpack to help properly distribute the load of the backpack in relation to the user's back. Still, these straps as implemented on the modified Ivarson et al. backpack are not adjustable.

Swedish, however, also discloses a backpack configuration concerned with the load distribution of the backpack body in relation to a user and teaches that it is known in the art to provide adjustable shoulder strap cinch straps (54). Swedish teaches that the straps (54) are adjustable via buckles (55), allowing a user to comfortably position and distribute the load within the backpack by tightening or loosening the cinch straps (col. 3 lines 29-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to also make the straps (600) of the Ivarson et al. in view of Gausling et al. backpack adjustable, as taught by Swedish, so that a user could comfortably reposition and redistribute the load within the backpack rather than having to settle for the single load position and distribution provided by the non-adjustable straps.

Regarding claim 24, the strap (600) of the Ivarson et al. in view of Gausling et al. backpack that is being made adjustable as taught by Swedish is at the top (202) of the backpack body and wherein, in use, joins to the at least one shoulder strap proximate

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where the at least one shoulder strap contacts the top of the at least one shoulder of a user (620), effectively satisfying the limitations of the claim.

Regarding claim 25, the first end (610) of the strap (600) is proximate the away-facing face, effectively satisfying the limitations of the claim.

4. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph #3 above in view of Clements (US 6,024,265).

The art as applied in paragraph #3 above discloses the claimed invention, including a zipper (32, Ivarson et al.) that would be over-passed by the implemented load-bearing straps (600) of Gausling et al., but fails to disclose the shoulder strap cinch strap including a separation clip that is separable to permit the shoulder strap cinch strap to separate into two portions.

Clements, however, discloses a backpack body having numerous cinch straps implemented on its various surfaces. Some of these cinch straps (25) have adjustable buckles (26) that are not separable into two portions. Other cinch straps (9) have adjustable buckles (10) that are separable into two portions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use either of such cinch strap/buckle combinations, including the releasable buckle separable into two portions, as taught by Clements, since such cinch straps designs are old and well known in the art.

5. Claims 3 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph #3 above in view of Shook (US 5,911,348).

Regarding claim 29, the art as applied in paragraph #3 above discloses the claimed invention except for the back-facing face having at least one air channel defined thereon, wherein said air channel has at least one opening at the periphery of the said back-facing face.

While the art as applied in paragraph #3 above discloses the use of padding on the back-facing panel, Shook teaches that it is known in the art to use padding that provides a series of air channels on the back-facing panel between the backpack body and the user's back in order to provide ventilation and comfort along a user's back. It would have been obvious to one having ordinary skill in the art at the time the invention was made to also use padding that provided at least one air-channel, as taught by Shook, in order to provide ventilation along a user's back and help to prevent excessive perspiration and possibly discomfort.

Regarding claim 3, at least one, if not all, of the air channels taught by Shook can be considered to face the spine of a wearer, as they face the user's back in general and the spine is located on the back, and all are certainly sufficiently deep so as to avoid contact with the spine of said wearer when in use, effectively satisfying the limitations of the claim.

Response to Amendment

6. In view of Applicant's amendments to the specification, the original objections to the both the specification and the claims, as set forth in the previous Office Action, have been withdrawn.

Response to Arguments

7. Applicant's arguments with respect to claims 3, 17-19, and 21-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6,802,442 US 6,070,776.

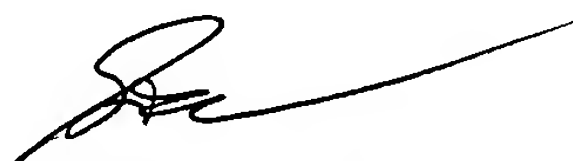
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Friday, 8am - 4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JML
3/29/06



Stephen K. Cronin
Primary Examiner